

ADMINISTRATIVE CODE

Chapter LIRC 1

GENERAL

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LIRC 1.01 General. The labor and industry review commission has jurisdiction for review of cases arising under ss. 40.65 (2), 102.18 (3) and (4), 106.52 (4), 106.56 (4), 108.09 (6), 108.09 (6), 108.10 (2) and (3), 111.39 (5) (a), 303.07 (7) and 303.21, Stats.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; am. Register, August, 1982, No. 320, eff. 9-1-82; am. Register, January, 1985, No. 349, eff. 2-1-85; am. Register, May, 1997, No. 497, eff. 6-1-97; correction made under s. 13.93 (2m)(b)7., Stats., Register, September 2001, No. 549.

LIRC 1.02 Petitions for commission review.

All petitions for commission review shall be received, or, in unemployment compensation, received or postmarked, within 21 days from the date of mailing of the administrative law judge's findings and decision or order, except as provided under this section. "Received" means physical receipt. A mailed petition postmarked on or prior to the last day of an appeal period, but received on a subsequent day is not a timely appeal, except in unemployment compensation. All petitions shall be in writing. The last day of an appeal period shall be on the next business day if the last day for filing falls on any of the following:

- (1) January 1.
- (1m) The third Monday in January.
- (1r) The third Monday in February.
- (3) The last Monday in May.
- (4) July 4.
- (5) The first Monday in September.
- (5m) The second Monday in October.
- (5r) November 11.
- (6) The fourth Thursday in November.
- (7) December 24, 25 or 31.
- (8) The Monday following if January 1, July 4 or December 25 falls on Sunday.

- (9) Any other day on which mail is not delivered by the postal authorities.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; am. Register, August, 1982, No. 320, eff. 9-1-82; am. (intro.), (3), (5), (6) and (8), cr. (1m), (1r), (5m) and (5r), Register, January, 1985, No. 349, eff. 2-1-85; am. (intro.) and (1m), Register, May, 1988, No. 389, eff. 6-1-88; am. Register, May, 1997, No. 497, eff. 6-1-97.

LIRC 1.025 Faxed petitions. Petitions for review may be filed by facsimile transmission. The date of transmission recorded by the facsimile machine shall constitute the date of filing the petition.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

LIRC 1.026 Cross-petitions. Any party may file a petition for review, whether or not any other party has already filed a petition for review. The filing of a petition for review by one party does not extend the time within which any other party may file a petition for review. All petitions for review, including cross-petitions, are subject to the requirements of s. LIRC 1.02 concerning timeliness.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

LIRC 1.027 Answers. A party opposing a petition for commission review may file an answer with the commission within 21 days from the party's receipt of a copy of the petition. A party filing an answer with the commission shall furnish a copy to the opposing party.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

LIRC 1.03 –1.07

LIRC 1.03 Withdrawals. Requests to withdraw petitions shall be in writing. The commission may deny a request by any party to withdraw a petition if the commission has already reviewed and decided the case, but not yet issued its decision, or if the commission considers that withdrawal is not in the best interests of proper administration of the program involved. Denials of withdrawals shall be in writing, but may be included in the findings of the commission

History: Cr. Register, January, 1985, No. 349, eff. 2-1-85; am. Register, May, 1988, No. 389, eff. 6-1-88.

LIRC 1.04 Review. Review by the commission is on the record of the case including the synopsis or summary of the testimony or other evidence presented at the hearing, as prepared by the department of workforce development, by the commission, or by an outside contractor, from a tape recording of the hearing or from notes taken at the hearing by the administrative law judge. The commission may also consider the hearing tapes or a transcript of the hearing testimony. Review shall be based on the transcript if a transcript was prepared prior to issuance of the administrative law judge's decision and the administrative law judge used the transcript in arriving at the decision, or if a party shows to the commission that a synopsis is not sufficiently complete and accurate to fairly reflect the relevant and material testimony and other evidence taken.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; renum. from LIRC 1.03 and am., Register, January, 1982, No. 349, eff. 2-1-85; am. Register, May, 1988, No. 389, No. 6-1-88; r. and recr. Register, May, 1997, No. 497, eff. 6-1-97.

LIRC 1.045 Obtaining copy of record. A party in a case before the commission may request the commission to provide a copy of the synopsis of the testimony or other file materials. The commission shall furnish the materials upon request but may charge a fee for photocopying of 20 cents per page. Upon proper showing of financial inability to pay for photocopying, the commission may waive the fee.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97.

LIRC 1.05 Hearings. If the record in a case is inadequate for the commission to arrive at a decision, the commission shall remand the case to the department of workforce development to take additional evidence on behalf of the commission.

Note: The commission does not conduct hearings as part of its review.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; renum. from LIRC 1.04, Register, January, 1985, No. 349, eff. 2-1-85; r. and recr. Register, May, 1997, No. 497, eff. 6-1-97.

LIRC 1.06 Oral argument. The commission may grant a written request for oral argument if it determines that an issue would be more clearly presented by oral argument.

Note: The commission does not consider oral argument to be necessary because review is on the basis of the record, the parties have the right to file briefs, and oral argument delays disposition of the petition.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; renum. from LIRC 1.05, Register, January, 1985, No. 349, eff. 2-1-85; r. and recr. Register, May, 1997, No. 497, eff. 6-1-97.

LIRC 1.07 Briefs. Either party may request the commission to establish a briefing schedule. Requests to file briefs may be made in the petition for review, in an answer, or in writing after the petition and answer. The commission may deny a request to file a brief which is not made in a petition or answer if the commission has already reviewed the case but not yet issued its decision at the time the request is made. Each party may file with the commission briefs or memoranda within the time limits of the briefing schedule established by the commission. Requests for extensions of time for filing briefs shall be made in writing. Extensions may be approved in writing upon good cause shown. A party filing a brief or memorandum with the commission shall furnish a copy to the opposing party.

History: Cr. Register, January, 1985, No. 349, eff. 2-1-85; am. Register, May, 1997, No. 497, eff. 6-1-97.

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Chapter LIRC 3

WORKER'S COMPENSATION

LIRC 3.01 Petitions for commission review
LIRC 3.02 Transcripts.
LIRC 3.03 Other petitions.

LIRC 3.01 Petitions for commission review. A petition for commission review of the findings or order of a department of workforce development administrative law judge under s. 102.18, Stats., shall be received within 21 days from the date of mailing of the findings and order to the parties by the worker's compensation division, or the commission at:

(1) The central administrative office of the worker's compensation division, 201 East Washington Avenue, P.O. Box 7901, Madison, Wisconsin 53707, or

(2) The worker's compensation division, 819 North Sixth Street, Milwaukee, Wisconsin 53203, or

(3) The worker's compensation division, Associated Bank Building, 1500 North Casaloma Drive, Suite 310, Appleton, Wisconsin 54915, or

(4) The office of the labor and industry review commission, 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; am. (1) (intro.) and (a), r. (2), Register August, 1982, No. 320, eff. 9-1-82; am. Register, January, 1985, No. 349, eff. 2-1-85; am. Register, May, 1988, No. 389, eff. 6-1-88; am. Register, May, 1997, No. 497, eff. 6-1-97.

LIRC 3.02 Transcripts. Transcripts of testimony at hearings conducted by administrative law judges of the worker's compensation division, department of workforce development, may be requested and obtained from the worker's compensation division of the department, according to s. DWD 80.14, after the commencement of an action to review an order of the commission in circuit court. The commission may direct the preparation of a transcript for the purpose of commission review if a satisfactory showing is made by any party that the synopsis of testimony prepared by the worker's compensation division is not sufficiently complete and accurate to reflect the relevant and material testimony and other evidence taken.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; am. Register, August, 1982, No. 320, eff. 9-1-82; renum. from LIRC 304, Register, January, 1984, No. 349, eff. 2-1-85; am. Register, May, 1988, No. 389, eff. 6-1-88; renum. from LIRC 3.03 and am., Register, May, 1997, No. 497, eff. 6-1-97.

LIRC 3.04 Compromise settlements.
LIRC 3.05 Actions for judicial review.

LIRC 3.03 Other petitions. The provisions of s. 102.18, Stats., shall apply to all petitions to the commission under ss. 40.65 (2), 303.07 (7) and 303.21, Stats.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; am. Register, August, 1982, No. 320, eff. 9-1-82; renum. from LIRC 3.05 and am. Register, January, 1985, No. 349, eff. 2-1-85; renum. from LIRC 3.04 and am., Register, May, 1997, No. 497, eff. 6-1-97.

LIRC 3.04 Compromise settlements. Compromise settlements of worker's compensation claims are solely within the jurisdiction of the worker's compensation division, department of workforce development, according to s. 102.16, Stats., and s. DWD 80.03. Under s. 102.18 (4) (d), Stats., if a compromise is reached while a case is pending commission review, the compromise shall be submitted to the commission, and the commission shall remand the case to the worker's compensation division for consideration of the compromise. If the compromise is not approved, the party who filed the petition for commission review may reinstate its petition by notifying the commission. Under s. 102.24 (2), Stats., if a compromise is reached while a case is pending court review of a commission order, remand shall be to the commission and the commission shall then remand the case to the department for consideration of the compromise.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; renum. from LIRC 3.06, Register, January, 1985, No. 349, eff. 2-1-85; am. Register, May, 1988, No. 389, eff. 6-1-88; renum. from LIRC 3.05 and am., Register, May, 1997, No. 497, eff. 6-1-97; correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1997, No. 497.

LIRC 3.05 Actions for judicial review. Judicial review of any commission decision shall be commenced in the manner and upon the grounds specified in s. 102.23, Stats., and not under ch. 227 or s. 801.02, Stats. Either party may commence a legal action for review of the commission decision in circuit court. The action must be commenced within 30 days from the date of the decision. Such action is

commenced only by filing a summons and complaint with the circuit court and serving an authenticated copy of the summons and the complaint upon the commission, all within 30 days. Service must be made upon a commissioner of the labor and industry review commission or an agent authorized by the commission to accept service only at the commission's office in Madison. Such service shall be deemed complete service on all parties but there shall be left with the person so served as many copies of the summons and complaint as there are defendants. Service made by mail is effective only if the pleadings are actually received by the commission within the appeal period. The complaint shall state the grounds upon which review is sought. The action shall be commenced against the commission, and the party in whose favor the order or award was made shall also be made a defendant. The proceedings shall be in the circuit court of the county where the plaintiff resides, except that, if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the defendant resides. If the plaintiff is a nonresident of Wisconsin, the proceedings shall be in the circuit court for Dane county. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees. The appealing party shall arrange for preparation of the necessary legal documents.

History: Cr. Register, March 1981, No. 303, eff. 4-1-81; renum. from LIRC 3.07 and am., Register, January, 1985, No. 349, eff. 2-1-85; r. and recr. Register, May, 1988, No. 389, eff. 6-1-88; renum. from LIRC 3.06, Register, May, 1997, No. 497, eff. 6-1-97.